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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/276,014	03/25/99	SI LE A	SPI011(42891

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WILLIAM E. MCSHANE
CONNOLLY AND HUTZ
1220 MARKET STREET
P O BOX 2207
WILMINGTON DE 19899

EXAMINER	
OWENS JR,H	
ART UNIT	**PAPER NUMBER**
1623	14

DATE MAILED: 07/31/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
09/276,014	Le
Examiner	**Art Unit**
Howard Owens	1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *May 14, 2001* .

2a) ☒ This action is **FINAL.** 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1, 2, and 4-13* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1, 2, and 4-13* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

19) ☐ Notice of Informal Patent Application (PTO-152)

20) ☐ Other:

Response to Arguments

The following is in response to the amendment filed 5/14/01:

An action on the merits of claims 1, 2, 4-13 is contained herein below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3 and 15-23 have been canceled by applicant.

Restriction requirement

In response to the restriction requirement mailed 4/7/00, applicant elected Group I, claims 1-13 with traverse. The inclusion of claim 14 as being rejected under 102(b)was in err. Claim 14 is a non-elected invention. The rejection should have been limited to claims 1-13 in accordance with the final restriction mailed 8/7/00; thus, applicant's arguments with regard to claim 14 are moot.

35 U.S.C. 102

The rejection of claims 1-13 under 35 U.S.C. § 102(b) as being anticipated by Mentink et al., U.S. Patent No. 5,314,701 is withdrawn in view of applicant's amendment.

The rejection of claims 1, 2, 4-13 under 35 U.S.C. § 102(b) as being anticipated by Caboche, U.S. Patent No. 5,436,329 is maintained for the reasons of record.

Caboche teach a composition containing hydrogenated saccharides wherein the DP values overlap or anticipate those of the claimed invention (see column 2, lines 61 - column 3, line 30). Caboche also teach the inclusion of a crystallisable polyol such as

ISOMALT (see table 1)in the composition and the use of this composition in confectionary products (see example 6 and columns 1-2).

Applicant's arguments that the Caboche reference is too broad is not persuasive. Applicant does not dispute the fact that the composition of Caboche teaches the monosaccharides, disaccharides, oligosaccharides and polysaccharides in concentrations that overlap with applicants. Applicant's response is silent as to why a reference which contains the same concentration ranges of monosaccharides, disaccharides, oligosaccharides and polysaccharides in a composition as that of applicant is not anticipatory. For instance, the examiner cited (column 2, lines 61 - column 3, line 30) wherein the range(s) of .1 to 75% hydrogenated monosaccharides, .1 to 96% hydrogenated disaccharides, 11 to 96% hydrogenated monosaccharides and disaccharides, and a balance of hydrogenated oligo and polysaccharides which can amount to less than or equal to 73% is not anticipatory for the ranges as claimed by applicant. The fact that the reference is broad does not overcome the fact that the elements of the claims are taught by the reference.

Applicant's inclusion of an acidulant in claim 13 is seen as an inherent feature within the food art as the use of acidulants such as malic acid, citric acid or tartaric acid in this food art is common practice.

Applicant also argues that there are no specific teachings of polysaccharides not hydrolysed by amyloglucosidase. Applicant's attention should be drawn to column 3, line 10, wherein hydrogenated oligo and poly saccharides are included which are obtained by hydrolysis of starch (lines 21-25). With regards to the preferred embodiments or examples of the teachings of Caboche, the teachings of the prior art for a rejection under 35 U.S.C. 102(b) are not limited to the working examples or preferred embodiments but whether the claimed elements are taught in the reference.

Newly added claims 24 and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stroz et al. (Stroz), U.S. Patent No. 4,248,895.

Claims 24 and 25 are drawn to a hydrogenated starch hydrolysate wherein the content of hydrogenated monosaccharides is from 2.89 to about 7.65 wt%, the content of hydrogenated disaccharides is from 25.82 to about 32.91 wt.% and the content of hydrogenated trisaccharides, oligosaccharides and polysaccharides is from about 62.55 to about 66.54 wt.%, with a degree of polymerization greater than or equal to 3.

Stroz et al. claim a hydrogenated starch hydrolysate composition (claim 14) wherein the starch hydrolysate contains 6 to 10% monosaccharides, 25 to 55% hydrogenated disaccharides, 20 to 40% tri to hepta hydrogenated saccharides and 15 to about 30% hydrogenated saccharides higher than hepta. Oligosaccharides and polysaccharides inherently have a DP of 3 or greater, thus this limitation is anticipated as well by Stroz.

35 U.S.C. 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mentink et al.(Mentink), U.S. Patent No., 5,314,701.

Mentink et al. teach a sugar free hard candy containing hydrogenated saccharides wherein the DP values and proportions of the saccharides are analogous to those set forth in the instant invention (see column 6, line 29 - column 7, line 68)also containing a crystallisable polyol such as isomalt (see example 1) wherein the

transition glass temperature (tgc) is between 60° and 90° C (col. 6, line 66) analogous to the tgc set forth in the instant claims. Applicant's inclusion of an acidulant in claim 13 is not seen to be novel over the prior art as the use of acidulants such as malic acid, citric acid or tartaric acid in this food art is common practice.

Although Mentink sets forth disaccharides at a composition of 35% Mentink does not teach disaccharides at a composition of 34.3%. However, one of skill in the art would not recognize a statistically significant difference between 34.3% and 35%; moreover, applicant has not set forth any unexpected results from that seen in the composition wherein the disaccharides are .7% more in composition. One of skill in the art would have the same expectation of success in a composition wherein the disaccharide composition was .7% less than that known in the prior art.

It would have been prima facie obvious to a person of ordinary skill in the art at the time the invention was made to combine the monosaccharides, disaccharides, oligosaccharides and polysaccharides in a composition with the concentrations claimed.

A person of ordinary skill in the art would have been motivated to produce the composition as claimed given the art recognized benefits of a sweetening composition that has good thermal stability and malleability, low hygroscopic nature and also has anticaries properties.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Howard Owens whose telephone number is (703) 306-4538. The examiner can normally be reached on Tuesday-Friday 9 a.m.-6:30 p.m. (EST).

If attempts to reach the examiner by telephone are unsuccessful, Mr. Gary Geist (703) 308-1701, may be contacted. The fax phone number for Group 1600, Art Unit 1623 is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

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Secure and confidential access to patent application status is now available; see http://www.uspto.gov/ebc/index.html for more information.

Applicant(s) may pay patent maintenance fees, non-filing application fees and maintain USPTO accounts through http://www.uspto.gov/web/offices/ac/comp/fin/clonedefault.htm

GARY GEIST
SUPERVISORY PATENT EXAMINER
TECH CENTER 1600